

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: THOMAS G. )  
HOUMAN, RICHARD B. STEVENS, )  
THERESA A. FULTS and TIMOTHY G. )  
KENNY )

Serial No. 09/716,392

Filed: NOVEMBER 20, 2000

For: ABUSE RESISTANT SKIM

Examiner: CALLIE E. SHOSHO

Art Unit: 1714

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) Date March 14, 2003

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

SECOND DECLARATION OF RICHARD B. STEVENS

Richard B. Stevens, being duly advised, declares as follows:

1. He is one of the applicants in the above-identified application.
2. He executed the DECLARATION OF RICHARD B. STEVENS on July 23, 2002 that was filed in above-identified application.
3. He has reviewed US Patent 6,063,472 to Takaoka et al and the "kneaded mixtures" described therein.
4. He has reproduced, as near as possible, the kneaded mixture of Example 10 of the Takaoka et al patent because it appears to describe a composition which is the closest to the self-gauging coating compositions claimed in the above-identified application.

5. The Takaoka et al patent presents 21 examples of compositions illustrating the Takaoka et al invention. Most of the compositions shown in the examples include as the "aggregate" a very finely divided calcium carbonate (average particle diameter of 40 microns), which is well outside the 0.020 to 0.050 inch (510 to 1270 microns) range required by applicants' claims. The Takaoka et al patent also presents 5 examples (See examples 5, 14, 17, 18 and Comparative 4) of compositions that employ finely divided silica sand aggregate (average diameter of 120 microns), which is also outside the range specified by applicants' claims. Only examples 10 and 11 of the Takaoka et al patent present compositions that employ an aggregate within the 0.020 to 0.050 inch (510 to 1270 microns) range required by applicants' claims. The compositions of examples 10 and 11 use as a mica aggregate having an average particle size of 700 microns (See Col. 14, lines 7-8).

6. A 700 micron mica sample was requested from Pacer Corporation, a commercial purveyor of mica products. Pacer Corporation provided a sample of "Pacer 24X Muscovite Mica" that fit Pacer's definition of a 700 micron product. Pacer provided the following sieve analysis as "typical" for the 24X Mica Product:

MESH SIZE	% RETAINED ON
8	10.1
10	12.1
30	48.9
60	22.6
80	4.5
PAN	1.9

7. The Particle Size Distribution of the Pacer 24X Muscovite Mica sample was measured using a Ro-Tap device for screening. The results are shown below:

Mesh Size	Weight %	Micron Size Equivalent
+6	0.0	
+8	12.07	2360
+10	11.33	2000
+16	28.66	1180
+20	12.97	850
+30	11.35	600
-30 mesh	23.62	< 600

This was consistent with the data provided by Pacer and consistent with the product being a 700 micron product.

8. In reproducing the composition of example 10 of the Takaoka patent, materials that could be obtained in the United States were used. Specifically, the following materials were used:

<u>INGREDIENT</u>	<u>TRADE NAME</u>	<u>AMOUNT</u>
Calcium hydroxide	Niagara Slaked Lime (Niagara Lime)	40
Aqueous emulsion	Aquamac 454 (Eastman)*	10
Aggregate	24X Muscovite Mica (Pacer Corporation)	17.8
Fluidizing Agent	Melment F17G (SKW)	1.3
Water	(Adjusted to account for water Aquamac)	31.8
	<b>TOTAL</b>	100.9

\* - Aquamac 454 contains 8.2% solids. Therefore, 82 grams of Aquamac 454 were used to provide the equivalent of 10% at 45% solids, with 18 grams of excess water.

7. The composition of Example 10 was applied to gypsum wallboard using a trowel, in the manner described at page 10, lines 9-14 of the above-identified application. This produced a finish that was about 0.030 inches thick. The mica used was not uniform enough to produce a float finish with a trowel. The Example 10 material could not be spread out evenly and used as a floated finish or self leveling type because the particle distribution of the mica was broad and included a coarse fraction that caused terrible streaking through the finish as you attempted to trowel it (or float it) out smooth and flat. Clearly, this composition lacked the tight distribution of particle sizes with a controlled topsize that is necessary to provide self-gauging. The composition of Example 10 lacks any sort of self-gauging property.

8. Another portion of the composition of Example 10 was applied to gypsum wallboard as a thicker film. Basically the composition was just spread it out over the board as evenly as possible with the trowel, but only with limited trowel pressure and with no swirling motion on the trowel. It was observed that – any pressure applied to the trowel to perform normal troweling motions produced severe streaking in the surface. This film turned out to be about 0.088 inches thick.

9. Both films of the Example 10 material dried to a firm white finish. The mica in the example 10 composition was a large flake type and the resultant finish appeared to be almost a scaly white surface. Both films were subjected to abrasion testing using the 3M type tester as described in the above-identified application at page 10, lines 14-17). Using the evaluation criterion of first visible

surface damage, the thin application of example 10 lasted only 6 strokes, and the thick example lasted only 8 strokes. This would be a rating of 1 (a "low" 1 at that) on the 1 to 10 scale described at page 19 of the above-identified application.

10. Clearly, the Takaoka et al compositions have demonstrated an absence of any self gauging characteristic and fail as to the ease of finishing. Further, the abuse resistance of the Takaoka et al compositions is inferior to the abuse resistance of the compositions claimed by applicants. Accordingly, it is clear that Takaoka et al fails to suggest the self-gauging, abuse-resistant compositions defined by applicants' claims.

All statements made herein as of my own knowledge are true and all statements made herein as on information and belief are believed to be true. Declarant acknowledges that he has been warned that willful false statements and the like are punishable by fine or imprisonment or both (18 USC 1001) and may jeopardize the validity of the application or document or any patent resulting therefrom.

March 7, 2003

  
Richard B. Stevens